

U.S. FISH AND WILDLIFE SERVICE
SOUTHWEST REGIONAL OFFICE
P.O. BOX 1306
ALBUQUERQUE, NEW MEXICO 87103-1306

FINDING OF NO SIGNIFICANT IMPACT

APPROVAL OF THE AMENDED AMERICAN BURYING-BEETLE
OIL AND GAS INDUSTRY CONSERVATION PLAN
AND ISSUANCE OF MULTIPLE SECTION 10(a)(1)(B) PERMITS
FOR INCIDENTAL TAKE OF THE
AMERICAN BURYING BEETLE (*Nicrophorus americanus*)
RESULTING FROM OIL AND GAS ACTIVITIES
WITHIN THE 45-COUNTY PLAN AREA IN OKLAHOMA

An environmental assessment (EA) and Amended American Burying-beetle Oil and Gas Industry Conservation Plan (2019 ICP) have been prepared to continue to support the issuance of multiple section 10(a)(1)(B) permits (Permits) for incidental take of the federally listed endangered American burying beetle (*Nicrophorus americanus*, ABB). The U.S. Fish and Wildlife Service (Service) approved the original ICP (2014 ICP) on May 21, 2014. An amendment to the ICP was completed in 2016. The 2016 amendment extended the ICP sign-up period, submission of Individual Project Plans (IPPs) period, and project construction period by 3 years. The Finding of No Significant Impact (FONSI) for the original ICP and the FONSI for the 2016 amendment are incorporated herein by reference.

Preferred Alternative

The proposed alternative is approval of the 2019 ICP as written, subsequent issuance of multiple permits for incidental take of the ABB within the Planning Area during the 25-year term of the ICP, and implementation of the ICP as proposed. The 2019 ICP will extend the ICP sign-up period, submission of IPPs period, and the project construction period by an additional 5 years. All incidental take coverage provided by the 2019 ICP will end when any permits issued expire on May 20, 2039, regardless of when permits are issued or IPPs are approved. These are the only changes proposed for the 2019 ICP.

The 2019 ICP does not change the covered species, the covered area, the mitigation requirements, or the funding requirements of the original ICP. Each applicant must meet issuance criteria for a permit, submit and get approval for individual projects, and fulfill mitigation requirements prior to conducting any activity that may result in take of ABB. Incidental take would continue to be limited to a cumulative total (from all permits issued under the ICP) of 32,234 acres (0.16 percent of the 19,612,333 acres of ABB habitat within the Plan Area) of ABB habitat. Actions covered under the ICP may result in take of the ABB associated with activities including, but not limited to exploration, development, extraction and transport and/or distribution of crude oil, natural gas, and other petroleum products.

Background and Public Participation

A Notice of Availability of the draft EA and 2019 ICP was published in the *Federal Register* on March 14, 2019 (84 FR 9371). The public comment period ended on April 15, 2019.

We received one comment during the 30-day public comment period that was not substantive. No changes were made to the final EA.

Determination

Significance, as used in NEPA, requires considerations of both context and intensity. Context means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. The covered area (*i.e.*, area subjected to effects resulting from the proposed action) is limited to the known and potential range of the ABB and its habitat within 45 of the 77 total counties in the state of Oklahoma; therefore, the context of the impacts (both negative and beneficial) is considered negligible for the States and the remainder of the Nation.

Intensity refers to the severity of the impacts. We have considered the following regulatory factors in evaluating intensity.

- (1) Impacts that may be both beneficial and adverse. A significant effect may exist even if the Federal agency believes that on balance the effect will be beneficial.

The EA has indicated impacts may occur to up to 32,234 acres of suitable ABB habitat within the Planning Area (approximately 0.16 percent of the 19,612,333 acres of suitable ABB habitat within the Planning Area). However, Applicants will minimize impacts that may result in impacts to suitable ABB habitat through the implementation of avoidance and minimization measures outlined in the 2014 ICP. In addition, we anticipate conserving, in perpetuity, up to 0.32 (64,468 acres) percent of the ABB habitat in the Planning Area (19,612,333 acres), assuming full use of authorized take described in Section 3.3.4 of the 2014 ICP.

Impacts to ABB suitable habitat that occurs as a result of ICP implementation would constitute a short-term effect to the ABB populations in Oklahoma, which would have minimal impact on the species as a whole, and the mitigation is anticipated to provide secure areas for ABB and mitigate for these short-term effects. Therefore, these impacts are insignificant.

- (2) The degree to which the proposed action affects public health or safety.

The EA has indicated that no impacts to public health or safety are anticipated from the proposed project.

- (3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The EA has indicated that no adverse long-term impacts to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas are expected to result from the proposed action.

Impacts to prime farmlands are expected to be minor and limited to the physical occupation of small areas by pump stations or other above-ground pipeline infrastructure. Standard industry procedures to avoid/minimize direct and indirect impacts will be implemented; therefore, impacts to prime farmlands are insignificant.

Minor impacts to wetlands associated with downstream sedimentation may occur as a result of the covered activities. To minimize impacts to wetlands, erosion and sedimentation controls, as well as other minimization and mitigation measures, as described in Section 4.2 of the 2014 ICP, would be implemented during all aspects of construction and maintenance activities within the Planning Area. Therefore, impacts to wetlands are insignificant.

In order to participate in the ICP, applicants must agree to conduct a historical/cultural review of their project site and work with State Historical Preservation Officer/Tribal Historical Preservation Officer to overcome any significant impacts to cultural resources; accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners; and avoid adversely affecting the physical integrity of such sacred sites. Therefore, impacts to cultural resources are insignificant.

- (4) The degree to which the possible effects on the quality of the human environment are likely to be highly controversial.

We have no evidence to suggest that the effects on the quality of the human environment are likely to be highly controversial.

- (5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

None of the effects of the proposed project are highly uncertain because the effects of the covered activities are understood, and we know the beneficial effects of the avoidance, minimization, and mitigation measures on the human environment.

- (6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

Future actions would be reviewed on their own merits. Thus, the approval of the 2019 ICP would not establish a precedent for future actions or represent a decision in principle about future actions with potentially significant environmental effects.

- (7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

The proposed project is not directly related to any other future action.

- (8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

The EA has indicated that no adverse impacts to districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places; or, significant scientific, cultural, or historical resources are expected to result from the proposed action.

- (9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

The EA has indicated that proposed project will result in a total of up to 32,234 acres of suitable ABB habitat within the Planning Area (approximately 0.16 percent of the 19,612,333 acres of suitable ABB habitat within the Planning Area). In perpetuity conservation of up to 64,468 acres of suitable ABB habitat (0.32 percent of the suitable ABB habitat within the Planning Area) will occur as a result of the proposed action.

- (10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

Approval of the 2019 ICP and subsequent implementation of the ICP and issuance of permits would provide exceptions to the prohibitions of take of ABB that may result from specific otherwise lawful activities. Approval of the 2019 ICP and subsequent implementation of the ICP and issuance of permits does not violate applicable Federal, State, or local laws or requirements imposed for the protection of the environment.

Finding of No Significant Impact for the Amended American Burying Beetle Oil and Gas Industry Conservation Plan

Based on information in the EA and supporting data in Service files, we have determined that issuance of the Permit is not a major Federal action that would significantly affect the quality of the human environment within the meaning of section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). Accordingly, the preparation of an Environmental Impact Statement on the proposed action is not warranted. Therefore, the Service has made a finding of no significant impact as allowed by NEPA regulation and supported by Council on Environmental Quality guidance.

It is my decision to approve the 2019 ICP and, where applicants meet all requirements in the ICP, subsequently issue section 10(a)(1)(B) permits for geophysical exploration (seismic), development, extraction, or transport of crude oil, natural gas, and/or other petroleum products, and maintenance, operation, repair, and decommissioning of oil and gas pipelines and well field infrastructure within ABB habitat in Oklahoma.

Acting 
Assistant Regional Director
Ecological Services

5/24/19
Date

ENVIRONMENTAL ACTION STATEMENT (EAS)

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA), as well as other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record. In addition, I have determined that the action of implementing the Amended Industry Conservation Plan and subsequently issuing section 10(a)(1)(B) permits for geophysical exploration (seismic), development, extraction, or transport of crude oil, natural gas, and/or other petroleum products, and maintenance, operation, repair, and decommissioning of oil and gas pipelines and well field infrastructure within ABB habitat in Oklahoma:

_____ is a categorical exclusion as provided by 516 DM 2, Appendix 1 and 516 DM 6, Appendix 1 and no further NEPA documentation is necessary.

XX is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.

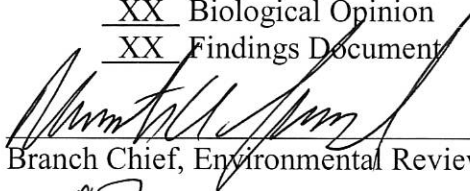
_____ is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

_____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policies, regulations, or procedures.

_____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents:

XX Environmental Assessment
XX Biological Opinion
XX Findings Document


Branch Chief, Environmental Review

5/23/2019
Date


Division Chief, Environmental Review

5-24-2019
Date


Assistant Regional Director
Ecological Services

5/24/19
Date